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The accounting regulation in the French context: The case of corporate groups (1921-1943)

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Abstract

The aim of this paper is to shed light on the role of legislators and lawyers in establishing accounting regulations concerning corporate groups in France during the 1930s and the Occupation (1940 – 1944). A review of bills proposing accounting regulation shows that no significant progress was to be achieved. Furthermore, while some lawyers called for a comprehensive regulation of corporate groups, no such progress was made during the inter-war period. Ultimately it's the Vichy government which introduced the first regulations on accounting subsidiaries in the *French Plan Comptable* and limited the reciprocal shareholdings in the Act of March 4, 1943.

Key words: Accounting history, corporate groups, accounting regulation, inter war period, Occupation period, France.

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The development of corporate groups during the inter-war period represents one of the greatest structural shifts in French capitalism (Caron, 1995). Several works on the history of companies and on accounting have shown the impact of the subsidiarisation phenomenon. These include Alais, Froges & Camargue (Bensadon, 2007), Compagnie Générale d'Electricité (Bouvier, 2005), L'Energie industrielle (Vuillermot, 2001) and Schneider (d'Angio, 2000). With this development of shareholdings came a need for some companies to have a better understanding of the financial situation of the corporate group as a whole. This was the case for *Alais, Froges & Camargue*, who from the end of the 1920s onwards began producing financial statements in which some of the key concepts of today's group accounting can be found, like the scope of consolidation, the cancelling out of intercompany transactions and the minority interest not accruing to the parent company (Bensadon, 2008).

However, the development of corporate groups was not the only characteristic feature of the inter-war years. This period was also marked by successive politico-financial scandals involving organisations such as 'Aéropostale' (1928), 'La Gazette du Franc' (1930), 'La banque Oustric' (1931). The mechanisms which these scandals involved have already been brought to light (Thiveaud, 1998). The almost total lack of accounting regulations and the relationships between parent companies and subsidiaries played a significant role in the development of unscrupulous business practices. While standard accounting practices were established for insurance and reinsurance firms at the end of the 1930s, no regulation for industrial or commercial companies was implemented before the First World War (Lemarchand, 1995).

The aim of this paper is to shed light on the role of legislators in establishing mechanisms to regulate accounting and the relationships between parent companies and subsidiaries in France in the 1930s and during the Occupation. Did legislators try to regulate these new corporate groups composed of a parent company and subsidiaries? Did they seek to implement accounting regulations with a view to cleaning up business practices? Was the old French law on companies from 1867 reworked in order to take into account this new type of structure?

To try to answer these questions, two sources of information have been analysed: the first source comprises draft bills submitted by French deputies (Fleury-Ravarin (1921), Chastanet (1926) and Auriol (1929)) and the second comprises Law PhD theses researched in French universities from the 1930s up to the end of World War II. Priority was given to the latter printed source as these pieces of university research not only deal with the legal issues of the time, but also outline solutions which it would have been desirable to implement. The theses constitute rich material for understanding the legal and management practices of the day.

Following an inventory of the CUJAS law and economic sciences library, three Law PhD theses were identified in which issues concerning the regulation of subsidiaries are discussed. These are: Gégout, (1929), Sainton, (1938) and Baratte, (1943). Three other theses were also identified which deal specifically with the regulation of balance sheets and which develop, in particular, ideas on the financial information to be produced by companies at the head of corporate groups. These are the works of Spire, (1931), Percerou, (1932) and Rosset, (1933).

Reviewing the draft bills demonstrates that legislators did not provide a framework for the development of subsidiaries during the 1930s. Even though left-wing deputies denounced the abuse generated by the multiplication of subsidiaries and highlighted the need for the regulation of balance sheets in an economic context rife with financial scandals, no regulation of subsidiaries and balance sheets was established, except however, for insurance and reinsurance companies (I). While subsidiaries were already regulated in the UK and in Germany, the PhD theses demonstrate the legislative gap on subsidiaries in France during the

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1930s. (II). No progress was made on the regulation of accounting practices and subsidiaries until the French 3rd Republic ended and the Vichy government established plans for the *Plan comptable* (French standard accounting practices) (1942) in which the concepts of subsidiaries and shareholdings were outlined and in which, under a law on companies, the first regulation of subsidiaries was introduced via Article 8 of the Law of March 4th, 1943, aimed at limiting reciprocal shareholdings (III).

1. Unsuccessful attempts at regulating accounting practices

Several deputies from radical parties and the parliament's left wing submitted draft bills (Fleury-Ravarin, 1921; Chastanet, 1926 and Auriol, 1929) aimed at regulating accounting. With the exception of the regulation of balance sheets for insurance and reinsurance companies and two decree laws on auditing practices, no comprehensive regulation had been established in France.

A) Henry Fleury-Ravarin, 1921

At the end of the 19th Century, France was one of the most liberal countries in Europe in terms of accounting (Lemarchand, 1998, p. 30). Apart from two decree laws passed in the August and September of 1935, the situation hardly evolved at all during the 1930s. Several attempts, beginning in the 1880s, were made to standardise practices, but all were to fail due to the absence of a genuine will among the business world for such practices to see the light of day. The only standards that were actually implemented concerned insurance companies and cooperative banks.

However, several sets of plans for standardisation were submitted during the 1930s. In order to provide a legislative solution to the financial scandals of the 1920s, radical deputies regularly proposed draft bills aimed at protecting savings. On each occasion, accounting regulation was presented as one of the effective ways of preventing undesirable financial reporting practices in companies. In 1921, Henry Fleury-Ravarin, in response to the government's lack of action on accounting standardisation despite the successive financial scandals, submitted a draft bill to regulate balance sheets in joint stock companies.[1] He reminded deputies that the issue had already been raised in 1912, by the commission in charge of investigating the Rochette affair[2] and that Jean Jaurès had referred the matter to the Chamber of deputies with the following statement: "*The chamber invites the government to investigate and propose protective measures against public savings fraud: demanding in*

[1] Henry Fleury-Ravarin (1861-1924): Deputy for the Rhone region from 1893 to 1906, then from 1910 to 1914 and from 1919 to 1924. As a member of the Republican Union group, his legislative activity mainly concerned issues linked to fiscal policy, national defence and public health. Upon regaining his seat as deputy in 1919, he joined the *Républicains de gauche* (Left-wing Republicans) and in 1921 became a member of the Democratic and Social Republican Party.

[2] In 1902 Rochette founded the *Crédit Minier*, whose aim was to promote the idea of investing in foreign mining and industrial companies to small savers. The initiative's success led him to set up the *Union Franco-Belge, Société des Mines de la Nerva* and the *Banque Franco-Espagnole* among numerous various other financial and industrial companies. The multiplication of subsidiaries and setting up of a pyramid scheme of companies enabled Rochette to pay out dividends using funds invested in other companies (Lemarchand, 1995, p. 15). Rochette was arrested on bankruptcy charges on March 23rd, 1908. His arrest led to the collapse of the banking structure. A parliamentary inquiry was launched to investigate the circumstances of Rochette's arrest. The commission in charge of the inquiry and headed by Jean Jaurès denounced the appropriation of public savings by capitalists. (Thiveaud, 1997, p. 40).

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particular, if it is not possible to make it a requirement that every company state the terms under which balance sheets are produced in its articles of association" (Fleury-Ravarin, 1921, p. 1926). Almost 10 years later, despite this agenda having been voted unanimously, nothing had been done. In his draft law, Henry Fleury-Ravarin again raised the fundamental issue of whether accounting practices should be regulated or whether, on the contrary, a liberal system should be implemented. He described the situation in France at the time, remarking that: "*In the absence of legislation establishing the basic rules under which balance sheets should be produced, it can be said without exaggeration that in France, the number of different methods of devising a balance sheet is almost as great as the number of companies*" (Fleury-Ravarin, 1921, p. 1927). Before outlining the sixteen articles of the proposed law he called to mind the advantages of regulating balance sheets and the situation in other countries (Belgium, United Kingdom, Germany, Switzerland and Bulgaria). The aims assigned to this draft bill were somewhat contradictory as the following statement reveals: "[…] *the proposed legislation seeks to ensure that the regulations be widely encompassing, flexible and supple, and that they do not paralyse the indispensable innovative nature of business, finally, that they provide an effective barrier to reprehensible actions; without harming honest firms in any way*" (Fleury-Ravarin, 1921, p. 1930). The bill was referred to the Finance Commission which did not give rise to a report; thus the bill was never debated.

B) Jean Chastanet, 1926

Five years later, in February 1926, Jean Chastanet[3] submitted a draft bill aimed at reforming the auditing function in limited companies, regulating the way in which the balance sheets of these companies were produced and regulating the certified accounting profession. In the second section of this bill he contested the way in which Article 34 of the Law of July 24th, 1867 had been written, as he considered that: "*Article 34 leaves companies with the complete and utter freedom to present their situation as accurately or inaccurately as it pleases them. Shareholders are therefore uninformed, or rather they are ill-informed. Moreover, some companies have achieved, it must be said, a remarkable level of skill in the art of producing balance sheets which are as brief and as vague as possible*" (Chastanet, 1926, p. 276). Chastanet also mentioned the hostility met when trying to implement a standardised balance sheet. However, he discerned a difference between commercial and industrial companies - for which regulatory balance sheets could not be imposed - and banks, for which they should be implemented. This distinction was supported, according to Chastanet, by the fact that shareholders and the State had the possibility of accessing information from auditors, General Meetings and tax officers on the soundness of companies, while investors in financial institutions on the other hand had no way other than the balance sheet of knowing a bank's true situation. He added that the activity of credit institutions was even more susceptible to require such regulation because unlike industrial and commercial companies:

> "*We do not find the many contentious issues that have hindered the regulation of the accounts of industrial and commercial companies in the balance sheets of banks. There is no need to find a way of estimating production costs, with the myriad of complications that this causes, or to assess depreciation made on buildings or equipment, or check the true value of manufactured goods or stock. The balance sheets of banks comprise solid information which cannot and should not give rise to debate. The whole problem comes down to achieving the grouping*

[3] Jean Chastanet (1882-1946): Deputy for the Isère department from 1924 to 1936 and member of the Socialist Party group. His legislative activity focused particularly on social and agricultural issues. He also attempted to develop measures aimed at protecting public savings.

and presentation of these elements so that the balance sheet produced provides an accurate picture of the company's situation" (Chastanet, 1926, p. 277).

Two years passed before the deputy Chastanet tried again by proposing a condensed version of the same bill. Despite the endorsement by two renowned accountants (Reymondin and Sénéchal), the bill presented during a chamber sitting on December 20th, 1928 was not debated; the Finance Commission considered it unnecessary to present a report on the issue.

C) Vincent Auriol, 1929

In January 1929, the deputy, Vincent Auriol[4], left a draft bill on the desk of the Chamber of Deputies. His proposal, aimed at protecting savings and structuring credit, drew undebatable conclusions regarding business practices.

> "*Gentlemen, the successive scandals which have taken place on the Stock Exchange over the last few months, the ever-increasing immorality of financial practices and the resulting risk for the general economy have resulted in such a stir that everyone is demanding new legislation to protect savers and to prevent stock market speculation. But other than the profound economic transformations that the socialist movement is demanding, is it possible to regulate the financial market in a way which will clean up capitalist operations permanently? We don't believe so.*
>
> *Many attempts have been made throughout history to quash agiotage and speculation! We are merely left with the impression of constantly starting again. Agiotage and speculation have always managed to burst out of the narrow limits within which we have tried to contain them. It seems that legislative efforts alone lack the power to deal with this matter; decade after decade the legislature has merely acknowledged the development in size and complexity of speculative mechanisms, the accelerating pace of speculation and so it must be said, the growing immorality of transactions on the Exchange. The only demands to have been made have concerned the amendment of small details, as if the recording of these in texts were to immediately and permanently freeze, at a particular stage, an evolving situation for which regulation has done nothing other than mark out the main stages with acts and decree laws. To be certain of this, one only need take a glimpse at the financial history of our country over the last three centuries*" (Auriol, 1929, p. 18).

To remedy these evils, the Socialist deputy proposed the introduction of general company controls, structured around three aspects:

- the setting up of a High Council for banks, shares and companies;
- the implementation of a system aimed at governing companies' activities;
- the introduction of checks on balance sheets and annual reports.

On the latter, Auriol underlined that: "*These checks will only really be effective if there are laws to regulate balance sheets and the various annual reports produced by directors*" (Auriol, 1929, p. 22). He assigned the codification of standardised documents to the High Council for banks, shares and companies. This standardisation concerned balance sheets,

[4] Vincent Auriol (1884-1966): Deputy for the Haute-Garonne department from 1914 to 1940 and member of the Socialist Party group. He was Minister of Finance for the Popular Front government (1936-1937) and became the first president of the 4th Republic.

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operating accounts and profit and loss accounts. Auriol highlighted that the vagueness of the information provided was the fault of companies: "*[…] in all cases, the templates to be used for balance sheets and the various accounts must be included in the appendices of the company's articles of association; it is currently still too easy to prohibit prying shareholders from undertaking any practical analysis of documents by changing the names of items and the layout of accounts from one year to the next*" (Auriol, 1929, p. 22).

Auriol did not fail to mention the issue of subsidiaries. In fact his draft bill featured an aspect of utmost importance concerning financial reporting in corporate groups as it foresaw that the balance sheets of subsidiaries should be annexed to that of their parent company, where the latter held more than a 20% stake in shares:

> "*It is currently common for a company having difficulty disguising its balance sheet to exchange its portfolio for the unlisted shares of one of its subsidiaries; as the parent company's balance sheet generally mentions nothing as to the value of the subsidiary, all combinations suddenly become possible. It should therefore not be surprising that we oblige any company owning 20/100 of another company's capital to include in the annexes of its own balance sheet that of its subsidiary for the previous year*" (Auriol, 1929, p. 22).

On the whole, the 90 articles, presented in five sections, aimed at bringing about major improvements to the general operation of companies.

In articles 44 to 45 entitled *Holding et coopératives de placement* (Holding and investment cooperatives), Vincent Auriol raised the issue of shareholdings again by setting certain limits.

> *Article 44. Companies created, under whatever designation it may be (corporation, holdings, trustee, etc.), for the purpose of buying and managing other values using funds obtained from their shareholders or bondholders, may not issue shares for amounts exceeding their share capital.*
>
> *Article 45. Investment cooperatives whose sole purpose is to invest their capital in securities, will benefit from an exemption from proportional stamp duty and tax on securities income for the stocks and bonds constituting this capital.*
>
> *These investment cooperatives will be required to publish the breakdown of their portfolio in the annexes of their annual balance sheet. These documents will be subject at any moment to checks by sworn inspectors, appointed under this Act. Their portfolio should not be used to cover up commercial commitments and should statutorily include some distribution of safe investments. It should never include more than 25% of capital from any other company.*

In an environment which showed itself unfavourable to the improvement of financial reporting, the draft bill was never debated by the Chamber of Deputies; no more, for that matter, than were those of Fleury-Ravarin (1921), Chastanet (1926) or Auriol (1929).

Law PhD theses produced at French universities demonstrated the need to regulate subsidiaries and highlighted methods of financial reporting for corporate group development.

2. The need to regulate subsidiaries in France in the 1930s

For radically different reasons, subsidiaries were already regulated in the United Kingdom and Germany; in France, there was no regulation at all. Theses produced by Gégout (1929) and Sainton (1938) highlighted the importance of regulating subsidiaries. Those produced by

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Spire (1931), Percerou (1932) and Rosset (1933) showed that without establishing standardised accounting regulations, financial information published by corporate groups would be useless.

A) Regulation of subsidiaries in the United Kingdom and in Germany

The United Kingdom Companies Act of 1929 contained several provisions concerning subsidiaries; in particular, in regard to the power and remuneration of directors in common and to balance sheets. Article 123 of the Act laid down companies' obligation to supply three documents to shareholders: the director's report, balance sheet and the profit and loss account. The Companies Act of 1929 also demanded that companies include details of their relationship with subsidiaries in their balance sheet. The report produced by the Greene committee which was used in drawing up the Companies Act, stated that companies who wished to conceal their trading results had found a way to do so by creating "*inextricable confusion between their interests and those of their subsidiaries*". Shareholders were complaining that information provided by holding companies was unintelligible if it was not accompanied by comprehensive reporting on the situation with regard to its subsidiaries.

In response to these demands, articles 125 to 129 were devoted to the issue. Article 125 obliged parent companies to present their subsidiaries' stocks as well as accounts receivable and payable, in clearly distinguishable entries. In order to preserve business confidentiality, overall figures were to be provided.

Article 126 outlined the duty of directors to report on how profits and losses were calculated:

> "*Where a company has a direct shareholding or a shareholding through an intermediary, in one or several subsidiaries, a declaration stating how the subsidiary's or subsidiaries' profit and loss have been calculated in the holding company's accounts, will be included in the annexes of the balance sheet. This statement should explain how and to what extent:*
>
> *a) the holding company has provided for the losses of the subsidiary, whether it be in the accounts of the subsidiary or in those of the holding company, or in both;*
> *b) the directors of the holding have taken account of the losses of a subsidiary in establishing the holding company's profits and loss account* ".

Article 127 clarified the definition of a subsidiary and the checking criteria:

> "*When the assets of a company consist fully or partially of shares in another company held either directly or through an intermediary, and that:*
> *a) the value of these shares (at the time at which the holding company's accounts are produced) represents more than 50% of the issued capital of that other company or when this value is such that it gives the holding company more than 50% of the votes in the said company, or that:*
> *b) the company has direct or indirect control of the appointment of the majority of the directors in the said company, this other company will be considered to be a subsidiary company.*"

The last of these provisions, Article 128, focused on the disclosure of amounts paid to company directors. Companies were required to publish: "*the total value of amounts paid to directors in remuneration for their services, including all salaries, percentages and other benefits (emoluments) paid to them or likely to be received by them from the company or any of its subsidiaries*".

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The situation in Germany was somewhat different due to the existence of extremely powerful corporate groups known as *Konzerns*. It was Article N° 261 of the ruling of December 19th, 1931 which gave the Reich government the power "*to introduce clauses for Konzerns that would require end-of-year financial reporting and the production of a balance sheet and profit and loss accounts showing the whole group's situation*" (Sainton, 1938, p. 165). While Article N° 226 of the Commercial Code prohibited dependant firms from purchasing or applying for shares in the holding company, Article N° 240 prevented the granting of credit by the corporation to its own directors or to the directors of a company in which it held a majority shareholding.

Article N° 260 contained details of financial reporting for *Konzerns* under which they were required to publish a report exposing any existing links with dependent companies or another *Konzern.* Instructions on the information required to appear on the balance sheet were given in Article N° 261. The latter aimed at having companies include the various details on any shareholdings they may have had in their balance sheets. Thus, accounts receivable belonging to the *Konzern* had to be shown as a clearly distinguishable entry. Accounts payable were expected to be handled in the same distinct manner. The last requirement concerned the profit and loss account in which revenue had to be presented in two categories: that generated by the parent company and that generated by subsidiaries.

While the Companies Act of 1929 already included a range of provisions on subsidiaries in the United Kingdom, the arrival of the corporate group phenomenon in France drove legal practitioners to investigate ways of making business practices more transparent; however, the lack of regulation in regard to balance sheets made it difficult to implement effective financial reporting measures.

B) What legal measures were required to control subsidiaries?

The thesis produced by Maurice Gégout at the University of Paris in 1929 and entitled *Filiales et groupements de sociétés, (Etude juridique de l'intervention d'une société dans la constitution et le fonctionnement d'une autre société)* (Subsidiaries and Corporate groups, (Legal study on the involvement of one company in the creation and operations of another company)) calls to mind the fact that large commercial companies were no longer satisfied with entering into alliances with competitors; they sought, henceforth, to form companies which would be under their control. The use of the term *filiale* (subsidiary) was not without its problems. Gégout analysed the word's etymology in order to establish whether it was the most suitable choice. Was it that, in making reference to the links of filiation between a mother and her daughter, the mother company had to have created the '*filiale' ex nihilo* for it to be described as such? Or was it merely the fact that one company was under another's control, enough to allow the former to be called 'subsidiary' and the latter 'parent company'?

Gégout also stressed the phenomenon of multiplying subsidiaries and pointed out the increasing number of listed companies structured as holding companies. He also explained the needs that were met in the creation of subsidiaries. However, even though he believed that the main motivation of companies was the search for critical size, he pointed out that the creation of subsidiaries was also an adequate way of gaining entry to foreign markets and ensuring the distribution of finished goods or work in progress on the market. Setting up subsidiaries was also a way of ensuring supplies of raw materials and components at preferential prices. Finally, the creation of numerous subsidiaries by a parent company also offered it a precious opportunity to divide its risks. The main legal problem presented by subsidiaries lay with the involvement of one company in the setting up and running of another company. Gégout raised this fundamental issue of control and indirect shareholdings. He stated that control may be

exerted with less than 50% of voting rights and that the dispersion of capital was to be considered as a factor in determining control.

> "*A company which holds a major proportion of another company's capital can in fact succeed in dominating it; it has a place on the board of directors and participates in General Meetings, ensuring what the English call 'the control' of the other company. A small and rather homogeneous group of capitalists, sometimes representing barely 20/100 of shares, can succeed in controlling a company. Such a group can even control, not only the company in question, but other companies in which the former owns a significant amount of shares: for example, one capitalist can, with about a quarter of a company's share capital, exert control over it; however this in turn leads to controlling any other companies controlled by the first company; it is a way of creating an 'omnium' or 'holding company'; there are thus a whole set of subsidiaries which comprise successive generations of companies for which the control belongs to a common ancestor*" (Gégout, 1929, p.5).

None of the paragraphs in this thesis raise the issue of accounting practices in holding companies and subsidiaries. At most, Gégout's work includes several brief digressions on the valuation of subsidiaries. The thesis remains a valuable resource in so far as the author attempted to offer a definition of control.

In 1938, in a thesis entitled *Sociétés mères et filiales, contribution à l'étude du régime juridique des sociétés de capitaux* (Parent companies and subsidiaries - a contribution to the design of a legal framework for joint stock companies), Paulette Sainton discussed the issue of regulating subsidiaries. Unlike Gégout 10 years before, she included accounting related issues related and proposed a study of comparative law based on German and United Kingdom legislation.

The first section of this thesis introduced general concepts relating to subsidiaries and dealt with issues such as the country of the subsidiary and distinctions to be made between the assets of a subsidiary and those of the parent company. The second section entitled *Etudes pratiques des filiales* (Practical studies on subsidiaries) focused on the creation, operation and dissolution of a subsidiary. In conclusion, the author proposed regulation on subsidiaries inspired by foreign legislation. This proposal for reform was part of an overall attempt to regulate parent companies and subsidiaries and stemmed from the desire to clean up business practices. Accounting was to have quite an important role in controlling the activities of subsidiaries.

Following the example of Maurice Gégout (1929), Paulette Sainton presented the advantages of subsidiaries, including the inherent flexibility in the process of setting up which she said was "*well suited to the fluctuation of economic life as it depends solely on the will of the parent company which has time to strengthen or break the ties binding it to the subsidiary*". It was also a safe process compared to a contractual agreement, as it was not necessary to obtain the agreement of the subsidiary in order to become its owner. Furthermore the process was industrially productive and commercially discreet. Discretion was fundamental to the mentality of business confidentiality: "*Sometimes even a parent company prefers to keep secret the launch of a new area of business which is likely to scare shareholders who are ill-informed or unaware of the interest that a certain raw material or new usage might represent*" (Sainton, 1938, p. 11). Setting up subsidiaries also cost relatively little in financial terms and was advantageous from a tax standpoint. Sainton concluded her views on the advantages of subsidiaries with the statement: "*Whether it is a question of carrying out*

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vertical or horizontal integration, ensuring supplies of raw materials, a customer base, maritime or over-land transportation routes, a credit provider, or widening the scope of action to a regional, colonial or worldwide level, large companies always achieve it through the setting up of subsidiaries" (Sainton, 1938, p. 12).

A reminder was given of the abusive practices that subsidiaries could give rise to, which shows that the repeated financial scandals had left their marks. Sainton condemned the various forms of abuse - whether it be the creation of fictitious credit using bogus accommodation bills, the misuse of power by the parent company over its subsidiary (draining the subsidiaries) or even the setting up of subsidiaries for the benefit of the directors - illustrating them by calling to mind the different financial scandals (*Aéropostale, La Gazette du Franc, La banque Oustric*).

Also among the forms of abuse to which subsidiaries could be exposed was the creation of subsidiaries solely for carrying out operations which were prohibited to the parent company. This could involve, for instance, having the subsidiary purchase its shares in order to regulate share price and to sell them in due course.

The analysis of regulation in foreign legislation provided support for the author's reform proposals. Sainton's work is organised into six articles within which the following subjects are discussed: defining a subsidiary, forbidding reciprocal shareholdings beyond 10% of the capital, requiring an agreement at an Extraordinary General Meeting for the creation of a subsidiary, limiting the number of terms a director may serve to ten, limiting company directors' power to terminate agreements where these directors are board members of both companies, publishing financial indicators for subsidiaries and the names of shared directors in both the annual report and the balance sheet.

The most noteworthy proposals concerned the information which should appear in documents available to shareholders. The annual report had to include a special report on any agreements made between subsidiaries and the parent company and vice versa. The total value of sums paid by the parent company and subsidiaries to directors and '*senior employees*' also had to appear.

The balance sheet was especially targeted. The overall values of shareholdings and amounts receivable within subsidiaries as well as amounts receivable concerning directors had to appear on specific lines of the balance sheet's asset listing. For liabilities, any debts concerning the group's subsidiaries had to be clearly distinguishable from the debts of other parties.

In the profit and loss account, it had to be clear which revenues came from the subsidiaries and which were generated by the parent company.

However Sainton immediately put a dampener on her reform proposals by highlighting the fragility of the foundations on which her legal measures were built, that is to say, accounting practices. In fact the author concluded the study with the statement: "*This reform will be difficult to implement so far as standards for the entire balance sheet have not been introduced in France*" (Sainton, 1938, p.178).

C) The improbable financial reporting of corporate groups

François Spire embraced the subject in his thesis entitled *La réglementation des bilans en France et à l'étranger* (The regulation of balance sheets in France and abroad), researched at the University of Paris in 1931. He also discussed the effects that regulating balance sheets could have on business opportunities. Basing his arguments on the principle of individual liberty and referring to the French Revolution, Spire explained that balance sheets should not

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undergo any form of State intervention. Liberalists opposed to regulating balance sheets argued that regulation would do nothing to prevent fraudulent practices as managers would hide behind legislative clauses, interpreting them in their favour. The other argument put forward was that regulation would make it impossible for directors to carry out their functions: "*If regulations were to be imposed by law, we would see company directors resigning en masse and the recruitment of new board members would become almost impossible*" (Spire, 1931, p. 58). One of the arguments in favour of regulation was a significant improvement in financial reporting for shareholders, creditors, bond holders, the State and tax authorities. On the whole, Spire declared that he was in favour of regulating balance sheets. However, he remained opposed to making it compulsory for companies to comply with standardised balance sheets introduced by law. He proposed that the legislature merely lay down certain principles and obligations[5].

One might be surprised to find that the list of obligations did not state anything about subsidiaries and shareholdings. Spire's view on this topic was surprising. He stated: "*It does not seem necessary and even seems dangerous to us to oblige companies to publish the breakdown of their share portfolio in their balance sheet*" (Spire, 1931, p. 129). The reasons given to justify this view are unconvincing: "*Such a requirement, disregarding the crucial difference between the balance sheet and inventory [...]*" (Spire, 1931, p. 129).

It is in the thesis *Lois actuelles et projets récents en matière de sociétés par actions (Allemagne, Angleterre, Italie)* (Current laws and recent draft bills concerning companies limited by shares (Germany, England, Italy)), produced by André Percerou at the University of Paris in 1932, that the first advances in accounting standards for corporate groups and subsidiaries can be found. Percerou's work was part of the reflection on potential reforms on company law in France which would concern balance sheet practices, corporate groups and multiple-vote shares. His definition of corporate groups was as follows: "*The existence of a corporate group can be acknowledged in situations where several legally distinct companies are brought together under a common source of control; the control by common masters being in many cases a result of one or several of the companies possessing share capital in one or several of the others*" (Percerou, 1932, p. 528).

Percerou criticised this form of economic concentration in two fundamental ways. The first concerned the behaviour of company directors whose role was to favour one or several of the group's companies to the detriment of other companies belonging to the same group. The

[5] - the production of an annual balance sheet in compliance with a template provided in the company's articles of association in which clear and understandable terms are used:
- the categorising of assets according to their liquidity and liabilities according to their payability
- the valuation of assets using the criteria provided in the articles of association and the publication of these criteria within the balance sheet
- the inclusion of provisions for doubtful debt and the writing off of bad debt from the assets sheet
- the entering of paid-in capital under liabilities at face value; any uncalled capital appears as assets under a special heading
-the depreciation of assets subject to decay so that upon reaching the term of their normal usage duration they only appear in the balance sheet as a reminder
- to respect the principle of Special Depreciation
- to write off incorporation and start-up costs before any dividend distribution;
- to separate in the credits of the profit and loss account any undistributed profit remaining from a previous year, gross profit for the current year, operating income and random revenue.
- to separate in the debits of the profit and loss account any losses for the previous year, any gross value losses for the current year, overhead costs in a detailed list and random losses.

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second regarded reciprocal shareholdings which, according the author, created "*a dangerous mirage of power and volume*". One of the measures taken to limit such consequences was the implementation of legislation to restrict reciprocal shareholdings. Percerou did not believe, on the other hand, that publishing overall financial information or a list of shareholdings and their values, as was the practice in the United States or United Kingdom, would offer an effective solution. The reason given by the author was based on the widely shared attitude of the business world, highlighted in the following quote: "*[…] And yet, such a measure has almost no chance of being accepted. People would oppose it, rightly or wrongly, for creating a barrier to 'business confidentiality*" (Percerou, 1932, p. 541).

The same concerns were raised in 1933 in the thesis by Paul-René Rosset, entitled *Traité théorique et pratique des sociétés financières : holdings companies et investments trusts* (A theoretical and practical treatise on financial companies: holding companies and investment trusts). Chapter XXII entitled *Les comptes finals des sociétés financières (*The final accounts of financial companies) dealt with the issues surrounding the production of financial statements for financial companies. The author was apparently unfamiliar with consolidated accounting techniques as there is no mention of them in his work. He did, however, query the quality of balance sheets produced by financial companies in cases where, due to the multiplicity of activities of the companies belonging to the financial company, financial statements arrived several weeks or even several months late. This problem was even greater where there were sub-subsidiaries and when the dates of the financial end of year differed:

> "*If out of two directly controlled operating companies, one ends its financial year on 31st March and the other on 30th September, while another company operating in the same group closes its accounts on 30th June and also depends on an intermediary shareholding company for whom the financial year follows the calendar year, it is easy to imagine that the figures showing these companies' situations consequently go against the aim of the final accounts of holding companies, that is, to offer a view of the group's situation at a given time in its life*" (Rosset, 1933, p. 312).

Lateness in the production of financial statements allowed camouflaging to take place and fictitious dividends to be paid out. Rosset also indicated that with the current state of the regulations, the balance sheets produced were of purely relative value: "*Moreover, in general we can only regret the lack of clarity and detail found in financial companies' balance sheets, often resulting in documents which have no true meaning at all*" (Rosset, 1933, p. 315). The reasons for this are simple and widely acknowledged: on one the hand, the lack of regulation on holding companies and on the other, the lack of regulation on balance sheets which allowed company directors to blithely confuse shares, portfolios, shareholdings and trade unions. Rosset concluded that shareholders could not expect to find the information, to which they had a right, in the balance sheet. In order to find this information, shareholders should examine the board of directors' report and if possible, the full published list of shareholdings. However, the author made sure to add: "*It is understandable that it is not always possible for a holding company to provide, in such a way, information which is perhaps of a confidential nature to the business, in a document generally published in thousands of copies*" (Rosset, 1933, p. 318).

However, in order to circumvent this untouchable corporate confidentiality, the author suggested that shareholdings be grouped together, either by currency or by currency and by business activity.

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Throughout the 1930s, balance sheets, with the exception of those of insurance and reinsurance firms, remained unregulated. Legislation proposed by Left-wing deputies with a view to changing the situation, were not pursued. While subsidiaries were already subject to regulation in the United Kingdom and in Germany, the Law PhD theses studied show that there was a need to regulate subsidiaries in France. Improving the quality of the financial information produced by these groups of companies depended entirely on accounting regulations which were yet to be established. The lack of political impetus impeded the regulation of both accounting standards and subsidiaries throughout the 3rd Republic. Would the Vichy government play a role in changing this situation?

3. The Vichy government's role in regulating subsidiaries and accounting practices

Even though to some extent, the lack of regulation on accounting practices and subsidiaries contributed to the financial scandals of the 1930s, the ruling party's deputies never introduced legislation involving either aspect. Ultimately it was under the auspices of Marshal Pétain's National Revolution movement that two significant measures were taken.

A) Subsidiaries and shareholdings in the proposed *Plan comptable* (French standard accounting practices) of 1942

Standish (1990), Richard (1993) and Degos (2005) have already studied the origins of the proposed *Plan comptable* of 1942. The introduction to the draft *Plan comptable* quite clearly stated what was expected from the function of accounting. *'The purpose of accounting is to analyse a situation and state its results, enabling economists to then discuss those results; it is therefore up to the former to present the relevant data in a sufficiently precise, orderly and quick fashion, so that the other is in timely possession of the critical information required for this discussion'* (Inter-ministerial Commission for the *Plan comptable*, 1943, p. 9). The draft *Plan comptable* suggested a set of terminology and general provisions (chapter 1), two accounting frameworks (chapter 2), a list of accounts (chapter 3) and definitions and operational rules for accounts (chapter 4). The final chapter dealt with specific accounting operations followed by 10 annexes concerning cost accounting.

The plan dealt with a considerably wide range of issues which represented a substantial amount of work for those in charge of the standardisation process. The long introduction to the *Plan comptable* - which was in fact taken from an anonymously written article published in *La Revue d'économie politique* (Political economics review) of July 1942 - explained the plan's ambitions in detail. One of the aims attributed to the accounting function was to support the management of organisations; part of which was the need to provide directors with the means of observing and monitoring company performance. The reason for introducing the *Plan comptable* was to put an end to dubious practices.

> *"[…] moreover, little wonder if even in the most complex accounting, operations are classed differently, terminology is used differently, rules for valuing various assets and liabilities are never the same from one company to another, even within the same profession, the names given to accounts do not have the same meaning; operations of very different kinds are grouped under the same heading. What one company classes as a reserve, another calls a provision or depreciation. Depending on the methods chosen for calculating depreciation and the balance sheet's presentation, assets of equal value feature in the balance sheet's assets as*

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very different amounts. Individual estimates are mistaken for book values which they change, without, for that matter, these changes being justified" (Inter-ministerial Commission for the Plan comptable, 1943, p. 3).

Information to be published concerning subsidiaries was mentioned here and there.

The operations to be carried out when a company had subsidiaries were outlined under the section *Règles générales d'utilisation des comptes* (General rules on the use of accounts) which stated that:

"*Companies which are subsidiaries of another company, and which have several subsidiaries themselves having amounts payable and receivable in foreign currencies or have assets abroad, must also open secondary accounts or distinct sub-accounts to record the following items separately:*

- on the one hand, accounts payable and receivable for the parent company; on the other, those for the subsidiaries

- on one the hand, accounts payable and receivable in French francs, the value of assets located in France; on the other, accounts payable and receivable in foreign currencies, assets located abroad" (Inter-ministerial Commission for the Plan comptable, 1943, p. 25).

The second reference to subsidiaries is found in Chapter IV entitled *Définitions et règles* (Definitions and rules)*;* the *Plan comptable* distinguished between securities in listed and unlisted companies. In addition, a distinction was made between long-term and marketable securities, the latter being described as: "*those which were acquired with the sole objective of making a use of funds and drawing immediate income*" (*Inter-ministerial Commission for the Plan comptable*, 1943, p. 84). In regard to the valuation of securities, the value to be retained was the purchase price. Any additional costs (tax, brokerage and commission) were not included in the asset value and were to be recorded as costs. Document 1 provides instructions on the accounting methods to be used for the shares which appear in the balance sheets.

Document 1: Establishing share value in the balance sheet

Character and nature of securities		**Assets**	**Liabilities** **Inclusion of a provision for depreciation where necessary**
Share capital (11)	Listed shares (110)	Purchase price	Provision whose value may vary between two limits: - difference in the value of the asset and the value obtained by applying, for each share, the last half-year average share rating (1) published at the time of inventory. - difference in the value of the asset and the value resulting from the application of the average share rating over the last six years. In addition an extra provision will be made when it is justified by an event of exceptional importance (bankruptcy for example). Provision on the account 27270 (1) the average rating will be raised on the basis of a listing of average share ratings officially published at the end of each year.
	Unlisted shares (115)	Purchase price	Provision equal to the difference in the value of the asset and the estimated value of liquidating shares Provision on the account 27275

Marketable securities	Listed shares (120)	Purchase price	Provision equal to the difference in the value of the asset and the value obtained by applying, for each share, the last half-year share rating (1) published at the time of inventory. In addition an extra provision will be made when justified by an event of exceptional importance (bankruptcy for example). Provision on the account 27280
	Unlisted shares (125)	Purchase price	Provision equal to the difference in the value of the asset and the estimated value of liquidating shares Provision on the account 27285

From the *Inter-ministerial Commission for the Plan comptable*, 1943, p. 85

The information to be reported when a company had subsidiaries was outlined under the heading *Règles relatives à l'établissement du bilan* (Rules concerning the production of the balance sheet):

> "*The balance sheet is produced by all companies in compliance with the example provided in annex N° 6. The following rules must be followed in producing the balance sheet:*
>
> *- When capital is fully or partially depreciated, the label 'depreciated capital' followed by the depreciated amount, is entered in brackets beneath the heading 'capital'.*
>
> *- The bank accounts for which the balance is negative at the end of the financial year must be entered as liabilities, under the heading 'short-term liabilities'.*
>
> *- the balance sheets of companies which are subsidiaries of another company or which themselves have one or more subsidiaries must distinctly show the positive or negative balances of accounts opened under the name of the parent company and the subsidiaries*" (Inter-ministerial Commission for the Plan comptable, 1943, p. 147).

As regards the few professions which had already chosen to implement accounting standards (aeronautical, perfume and dairy industries)[6], the *1942 Plan comptable* was not widely applied.

The Vichy government's regulation efforts also aimed, through Article 8 of the Law of March 4th, 1943, at preventing the negative impact of increasing numbers of subsidiaries by limiting reciprocal shareholdings.

B) The Law of March 4th, 1943: *Preventing the mirage of power and size*

Pétain had a strong aversion to large companies and their sub-divisions in other companies. In his view large companies stifled the economy and small businesses especially, with their strength. In his speeches, Marshal Pétain often used the English term *trust*: "*Two fundamental principles will guide us (in establishing the new economy): the economy must be organised and controlled; State coordination must shatter the strength of 'trusts' and their capacity for*

[6] Archives of the Ministry of Economics and Finance. B-51 173, Note dated 28th September 1943 addressed by the General Pricing director to the Director of Economic documentation in which he stated that the inter-professional dairy associations which represented over 7,000 companies had already adopted an accounting framework and a list of accounts which they intended to make compulsory among a selection of businesses, from the start of the 1944 financial year.

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corruption. Thus, far from stopping individual initiative, the economy must be freed from its current shackles by subordinating it in the sake of national interest" (Pétain quoted by Kuisel, 1984, p. 232).

However the term 'trust' matched an economic phenomenon which already existed and which was already so well known to legal practitioners and economists of the day that they simply referred to it as: the *groupe de sociétés*. By using an Anglicism, Pétain wanted nothing more than to heighten the sense of mistrust towards this form of organisation behind which hid a pell-mell of foreign economic powers, joint ventures and cosmopolitan funding.

Several measures aimed at putting a stop to trusts were quickly enacted. Among them was the Law of September 18th, 1940, which reduced the possibilities of acquiring holdings in companies, limited the number of chairmanships which a sole person could occupy simultaneously and extended the legal responsibility of chairmen in cases of bankruptcy caused by poor management. This will to undertake reforms was followed up with the Law of March 4th, 1943.

The Law of March 4th, 1943 was one of the laws on companies to be introduced by the Vichy regime for reasons highlighted by Ripert (1943): "*...under a new regime, the State intended to make the strength of its control felt by financial powers*".

Before this, the functions and duties of chairmen of limited companies were governed by the Law of September 18th, 1940, as was the limit on the number of directors and their duties. The law aimed at concentrating the management of each company in the hands of a small number of people (the chairman of the board of directors) in order to make them bear a particularly heavy responsibility.

This law was repealed and replaced by that of November 16th, 1940 which included the majority of the clauses from the former text while adding certain details to them: in this law it was foreseen, among other things, that limited companies would be governed by a board comprising a minimum of 3 and a maximum of 12 members, that the chairman of the board of directors would have the function of managing director, that no one could undertake more than two terms as chairperson, or sit on more than 8 boards of directors for companies with their headquarters in France.

The works of legal commentators (Auger, 1943; Bastian, 1943; Baratte, 1943; Berolatti, 1943; Bosvieux, 1943; Deyzac, 1943; Mazeaud, 1944; Ripert, 1943) allow us to identify the origins of the Law of March 4th, 1943. They also show its contribution to the situation and the welcome it received. One would imagine, given the political context in which this law was enacted, that commentators' reactions would have been extremely positive; in fact they were quite the contrary. The failure to present the reasoning behind the law was often criticised by commentators who were thus obliged to devise hypotheses on the objectives of the law's creators.[7] The law was supposed to have been inspired by a draft produced a few years previously, by a committee of specialists and representatives of relevant ministries (Bosvieux, 1943, p. 1).

The Law of March 4th, 1943 focused on strengthening third party funding of companies by insuring lenders on the full amount of capital invested on the one hand, and clarifying the role

[7] In order to study the obscurities of the drafting of laws under the Vichy regime, we refer to Dominique Remy's work, *Les lois de Vichy : Actes dits "lois" de l'autorité de fait se prétendant "gouvernement de l'Etat français"*, (Acts known as 'laws' by the de facto authority claiming to be the government of the French State) Paris, Romillat, 1992.

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and responsibility of auditors and chief executives on the other. Various aspects were covered.[8]

In a thesis researched at the University of Paris in 1943, *La réglementation des filiales* (The regulation of subsidiaries), Barette suggested the following definition for reciprocal shareholdings: "*reciprocal or cross-shareholdings are said to exist when two companies have holdings in the other. A reciprocal shareholding occurs each time a subsidiary holds shares in the parent company*" (Baratte, 1943, p 29). Baratte criticised this type of inter-company relationship on five aspects:

- They (reciprocal shareholdings) infringed the prohibition on preferential voting rights (Law of 13/11/1933) of which the aim was to forbid board members from becoming entrenched at the head of the company.

- They infringed the principle of the reality of capital: every time two companies hold shares in the other, the asset for one of these companies is partially unreal because it is indirectly made up of a proportion of the company's own shares.

- They led to one company being used for the benefit of another or several other companies, at the risk of causing their downfall.

- They allowed fictitious credit via bogus drafts which were very easily drawn between subsidiaries and parent company.

- They encouraged capital lock-ups during which every company holds the majority stake - a practice which was rather advantageous for unscrupulous boards of directors.

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[8] Heading 1: Provisions common to limited companies and companies limited by shares
Article 1: Shares for cash
Action 2: Bond issues and loan conversion
Article 3: Sanctions
Article 4, 5 & 6: Increasing capital
Article 7: Exemptions
Article 8: Subsidiary companies
Article 9: Founders' shares
Heading II: Special provisions for limited companies
Article 10: Mandate of auditors
Article 11: Remuneration of members of the board of directors
Article 12: Appointment and dismissal of the chairman of the board
Article 13: Chief Executive Officer, appointment of managing director
Article 14: Exemptions from the law of 1940
Article 15: Repeal of the Act
Article 16: Entry into force of the law
The provisions common to limited companies and companies limited by shares concerned:
- The liberalisation of the nominal amount and share premiums for shares for cash;
- the prohibition of any capital increase in cash before the complete payment of the former capital;
- the prohibition of any share or bond issues by companies whose capital is not fully paid for;
- the prohibition of any statutory provision giving the board or management the power in advance to increase share capital without prior permission at the General Meeting;
- the limitation of reciprocal shareholdings between companies limited by shares (Article 8)
- the handling of groups of shareholders with preferential rights to subscribe to shares under capital increases.

The provisions specific to limited companies concerned:
- the exclusion of corporate bodies from the functions of chairman of the board of directors
- companies' general management;
- the remuneration of directors (fees and commission);
- provisions replacing Article 40 of the Law of July 24th, 1867 on agreements or contracts between directors and the company.

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In short, Baratte summed up the dangers of reciprocal shareholdings as follows:

"*[…] There is no longer any correlation between a company's true size and the appearance of the financial tower which is endlessly stacked up on top of risky superstructures, creating a mirage of power and size*" (Baratte, 1943, p. 51). Article 8 of the Law of March 4th, 1943 attempted to put an end to these undesirable practices

C) Article 8 of the Law of March 4th, 1943 on reciprocal shareholdings

Commentators regretted the law's overall lack of regulation for subsidiaries, as it only dealt with reciprocal shareholdings. Bosvieux (1943) points out that legislators had based their work on an extensive draft of a Company Code for companies limited by shares, produced a few years before the war, but which due to the scale and number of innovations it proposed had never been implemented. Provisions outlined under section VII of this draft, entitled *filiales et participations* (subsidiaries and shareholdings), were intended to limit reciprocal shareholdings. Article 139 thus made the distinction between *simple shareholdings*, which corresponded to a proportion of capital comprising between 10 and 35%, and '*subsidiarisation'* which was identified as soon as the proportion of capital detained reached over 35%. The forbidding of reciprocal shareholdings only concerned cases where the stake held was over 35%.

In Article 8 (Document 2), the selected threshold was not 35%, but 10%. Why did legislators lower the threshold to this level? Baratte offered three answers to this question:

- legislators had retained the idea of the 35% criterion for the concept of subsidiaries, but had wished to extend the prohibition on reciprocal shareholdings to all companies;

- legislators had wanted to abolish the notion of simple shareholdings and had lowered the criterion for 'subsidiarisation';

- legislators, in a desire to put an end to reciprocal shareholding policies, prohibited them, in general, from 10% upwards, without wishing to prejudge the definition of a subsidiary which would be the subject of a later provision.

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Document 2: Article 8 of the Law of March 4th, 1943

Article 8 of the Law of 4th March 1943:

Any company for which a proportion of the share capital, equal to or above 10%, belongs to another company cannot own shares in that company.

Any company which possesses a proportion of capital in another company, equal to or higher than the percentage stated above, must inform that company by registered letter with acknowledgement of receipt. This registered letter must be sent within three months of this law becoming applicable, if the situation requiring the letter to be sent existed at the time this law was introduced, or if not, within one month of the situation arising.

In cases where a mutual agreement cannot be reached between the two companies involved, either on the reduction of each company's shareholding in the other to 10%, or on the designation of which of the two companies should dispose of their shareholding, it will be up to the company which has the smallest fraction of the capital of the other to dispose of the shares comprising the fraction.

In the case where each company owns an equal percentage of the other company's respective capital, and where neither of the companies accepts to dispose of its stake in the other company, their reciprocal shareholdings in one another must both be lowered to 10%,

The disposal of shares carried out under the prohibition enacted by the first paragraph of this article must be carried out within three years of the date of legal termination of hostilities, if the situation to be settled existed at the time of this law becoming applicable, or otherwise, within five months of the sending of the registered letter referred to in the second paragraph of this article.

A fine of 10,000 to 100,000 francs will be charged to the directors or managers having infringed the clauses set out in this article. These infringements may be recorded by registrars.

The other aspect which caused commentators to question the article was that its provisions were only applicable to shareholdings in French companies and that legislators had not integrated the concept of indirect shareholdings. Despite its loopholes, it seems that Article 8 responded to the wish repeatedly expressed by Marshal Pétain: to prevent the establishment of trusts and *chains of companies*.

Apart from the issue of the percentage at which reciprocal shareholdings should be prohibited, Article 8 received quite a favourable welcome. Overall it was a coherent document offering simple and specific regulations. Nevertheless, there were several major loopholes. It is true that indirect reciprocal shareholdings completely escaped regulation; moreover, the complete lack of measures to ensure that companies be notified when a parent company's stake dropped below 10%, caused commentators to foresee the worst possible difficulties. Lastly, commentators were extremely surprised to see that the criminal sanctions which would be dealt to company directors were not accompanied by a ban preventing the company in breach of the law from receiving dividends and using its votes.

While some commentators did not give their opinion on Article 8 (Berolatti, 1943 and Mazaud, 1944), Bastian recognised that it contained some undoubtedly practical provisions: the obligation to make additional payments on shares within five years, the prohibition on issuing securities as long as capital was not fully paid up, the need for the chairman of the board to be physical person; but curiously he did not say whether he was in favour of the Article. Deyzac (1943) partly shared this view, recognising in an article published in the *Journal des notaires et des avocats* (Journal of Notaries and Lawyers) that the text contained several welcome clauses, for example, those preventing companies from increasing capital before the former capital was fully paid up, those preventing companies whose capital was not

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yet paid up from issuing securities, those preventing companies from having statutory clauses under which the board of directors could increase capital without prior deliberation at a General Meeting, those repealing Article 40 of the Law of July 24th, 1867, and those concerning fees and commission. As can be seen, Article 8 was not on the list of welcome provisions.

Augur (1943) employed a rather more sarcastic tone in the *Revue de sociétés* (Companies Review). In fact he hardly gave his opinion at all on the opportunities that the articles represented; he simply presented and explained them. But it is the way in which he set about his review which made it vicious. The first few lines of the article set the tone: "*We have not yet reached the twentieth law on joint stock companies since 1940; but we are on the right track. Once we reach the one hundredth, so say the good people, we will consider it dead and buried. Even though I am already further than* 'il medio del camin della vita', *I do not despair of seeing this ordinal attained before they bury yours truly*" (Auger, 1943, p. 65). Even though this law had been well received abroad, Auger, in his conclusion, did not fail to note that: "*this law only reforms details and we have a harlequin for company legislation*".

Bosvieux (1943) recognised that the provisions made in this law were "*sound and should be passed*", while Ripert (1943) demanded that a comprehensive law including all the rules on the operation of companies be eventually established.

The Law of March 4th, 1943 attempted to bring solutions to some of the malfunctions observed in the business world. It did not focus on an overall regulation of subsidiaries, but aimed to limit the abusive practices which occurred under reciprocal shareholding arrangements. The classification of shares proposed in the draft *Plan comptable* (French standard accounting practices) (1942) and Article 8 of the Law of March 4th, 1943, represented two areas of progress in the regulation of accounting practices and subsidiaries.

Conclusion

Left wing parliamentarians and radicals attempted to introduce accounting regulation by submitting various pieces of draft legislation. In a context where there was great concern over business confidentiality and where the business world was often tied to government members of the majority party, none of the proposed pieces of legislation on accounting practices was ever debated within the Chamber of deputies. At a time in France when the creation of shareholdings in companies was becoming increasingly common, neither did legislators seek to use legal measures to govern relations between parent companies and subsidiaries The lack of accounting regulations and the setting up of corporate groups without any legal framework encouraged the development of grey areas which led to various financial scandals. In founding the National Revolution, the Vichy government attempted to put an end to such practices. The finalisation of a draft for the *Plan comptable* (French standard accounting practices) which dealt with some of the issues concerning subsidiaries and shareholdings, and which included Article 8 of the Law of March 4th, 1943 limiting reciprocal shareholdings, represented significant progress.

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Archives

Printed sources

Proposed legislation (French Parliamentary Documentation centre)

Auriol. 1929. *Draft bill n° 1080* Annex to the minutes of the first sitting of the Chamber of Deputies on January 10,1929 concerning the reform of auditing in limited companies, the regulation of balance sheets and the regulation of the profession of certified Accountant.

Chastanet. 1926. *Draft bill n° 2668* Annex to the minutes of the first sitting of the Chamber of Deputies on February 25, 1926 concerning the reform of auditing in limited companies, the regulation of balance sheets and the regulation of the profession of certified Accountant.

Chastanet. 1928. *Draft bill n° 952* Annex to the minutes of the first sitting of the Chamber of Deputies on December 20, 1928 concerning the reform of auditing in limited companies and the regulation of balance sheets.

Fleury-Ravarin. 1921. *Draft bill n° 2600* Annex to the minutes of the second sitting of the Chamber of Deputies on April 29, 1921 concerning the production of the balance sheet in joint stock companies.

Law PhD dissertation CUJAS law Library

Baratte, J. 1943. La réglementation des filiales. PhD diss., Paris University.

Gégout, M. 1929. Filiales et groupements de sociétés. PhD diss., Paris University.

Percerou, A. 1932. Lois actuelles et projets récents en matière de sociétés par actions Allemagne, Angleterre, Italie. PhD diss. Paris University.

Rosset, P-R. 1933. Traité théorique et pratique des sociétés financières: "holdings companies et investment trusts". PhD diss., Paris University.

Sainton, P. 1938. Sociétés mères et filiales: contribution à l'étude du régime juridique des sociétés de capitaux. PhD diss., Paris University.

Spire, F. 1931. La réglementation des bilans en France et à l'étranger. PhD diss., Paris University.

Bibliography

Angio d', A. 2000. *Schneider et Cie et la naissance de l'ingénierie: des pratiques internes à l'aventure internationale 1836-1949*. Paris : CNRS éditions.

Auger, B. 1943. Les lois des 2 et 4 mars 1943 sur les sociétés par actions, *Revue des sociétés*1-2 ; 65-87.

Bastian, D. 1943. La réforme du droit des sociétés par la loi du 4 mars 1943, *Semaine juridique/G* 348 ; 31-39.

Berolatti, J-P. 1943. Les nouvelles dispositions relatives aux sociétés par actions, *Questions prud'hommales* mai ; 123-131.

Bosvieux, H. 1943. La nouvelle loi du 4 mars 1943 sur les sociétés par actions, *Journal des sociétés* Janvier à Mars ; 2-75.

halshs-00640504, version 1 - 12 Nov 2011

Bouvier, Y. 2005. La Compagnie générale d'électricité: un grand groupe industriel et l'Etat: Technologies, hommes et marchés 1898-1992. PhD diss., Paris Univ.

Cailluet, L. 1995. Stratégies, structures d'organisation et pratiques de gestion de Pechiney des années 1880 à 1971 ; PhD diss. Lyon, Univ..

Caron, F. 1995. *Histoire économique de la France: XIX^e^-XX^e^ siècle*. Paris : A. Colin.

Decugis, H. 1941. *La loi du 16 novembre 1940 relative aux sociétés anonymes: commentaires et formules d'application.* Paris : Sirey.

Degos, J-G. 2005. Les années sombres de l'Ordre national des experts-comptables: quelques textes oubliés, Paper presented at the XIth Conference of Accounting and Management History, march 23-25, in Bordeaux, Germany.

Deyzac, F. 1943. Les innovations de la loi du 4 mars 1943 relative aux sociétés par actions, *Journal des notaires et des avocats* CLXXIV ; 121-126.

Edwards, J. R. & Webb, K. 1984. The development of group accounting in the United Kingdom to 1933, *The Accounting Historians Journal* 11: 1; 31-57.

Kuisel, R. 1984. *Le capitalisme et l'Etat en France.* Paris : Gallimard.

Lemarchand, Y. 1995. 1880-1914, l'échec de "l'unification des bilans" ou le rendez-vous manqué de la normalisation, *Comptabilité-Contrôle-Audit* 1:1 ;1-20.

Margairaz, M. 1991. *L'Etat, les finances et l'économie: Histoire d'une conversion 1932-1952*, Paris : CHEFF..

Percerou, R. 1943. Commentaire de la loi du 4 mars 1943, *DA législation ;* 61.

Rémy, D. 1992. *Les lois de Vichy: Actes dits "lois" de l'autorité de fait se prétendant "gouvernement de l'Etat français"*. Paris : Romillat.

Richard, J. 1993. Les origines du Plan Comptable Français de 1947: les influences de la doctrine comptable allemande, *Cahier de Recherche du CEREG.* n° 9302.

Ripert, G. 1943. Une nouvelle réforme des sociétés par actions: la loi du 4 mars 1943, *Revue générale de droit commercial* 5ème année ; 89-108.

Rousso, H. 1987. Les paradoxes de Vichy et de l'Occupation: contraintes, archaïsmes et modernités. In *Blocages et dynamismes du capitalisme*, ed. P. Fridenson. and A. Straus., 67-82. Paris: Fayard.

Standish, P. 1990. Les origines du plan comptable général: évaluation des pressions allemandes et françaises, Paper presented at the XIth Convention of the French Accounting Association, May 26-28, in Saint-Maur, France.

Thiveaud, J.-M. 1997. Crises et scandales financiers en France sous la troisième République, *Revue d'économie financière* 225 ; 25-53.

Vivante, C. 1933. Les sociétés filiales et financières, *Annales de droit commercial* 42 ;271-276.

Vuillermot, C. 2001. Pierre-Marie Durand et l'Energie industrielle: l'histoire d'un groupe électrique 1906-1945. Paris : CNRS éditions.